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Flagstar Bancorp

Summary of SB 357

Proposed Amendments to Michigan Business Corporation Act Chapter 7A

The Purpose of the Proposed Amendment to Chapter 7A

- Chapter 7A of the Michigan Business Corporation Act (MCL 450.1775...450.1784) was intended to protect shareholders of Michigan Corporations from hostile takeovers via unsolicited tender offers or accumulation of shares in the open market — a traditional hostile takeover attempt.

- However, it was written too broadly. It unintentionally penalizes corporations who invite friendly shareholders to buy large amounts of stock from the corporation (rather than in the open market). Such friendly shareholders often buy such large amounts of stock from the company in order to provide a source of capital to the company.

- The statute's wording has the unintended consequence of covering such Michigan corporations where friendly shareholders take large positions by buying stock from the corporation (rather than in the open market). Those corporations have to obtain approval of super-majorities of shareholders to pursue normal growth strategies (i.e., via mergers, acquisitions, etc.)

- As a result, Michigan corporations with friendly shareholders holding such large positions may find it difficult or impossible to move forward with normal growth strategies (i.e., via mergers, acquisitions, etc.). This has the perverse effect of allowing rogue minority shareholders to block transactions designed to benefit all shareholders.

- The proposed amendments to Chapter 7A would allow such corporations to proceed with beneficial growth-oriented transactions in a normal fashion, while maintaining the hostile takeover protections the statute was intended to provide.

- Without an amendment to the current law, there may be missed opportunities to attract capital and investment in Michigan corporations. In addition, companies incorporated in Michigan may choose to reincorporate in other jurisdictions with less restrictive business combination statutes.

About Flagstar

- Flagstar Bancorp, Inc. ("Flagstar") is a Michigan corporation that wholly-owns Flagstar Bank, FSB ("Flagstar Bank").

- Flagstar Bank is the largest financial institution headquartered in Michigan, with $14.1 billion in total assets and over 3,000 employees in Michigan.

- Flagstar is 64% owned by a single shareholder, MP Thrift Investments L.P. ("MP Thrift"), a company organized under MatlinPatterson Global Advisors LLC. MP Thrift received regulatory approval to own its majority stake in Flagstar and since January 2009 has invested approximately $1 billion of capital into Flagstar. MP Thrift acquired all of its shares of Flagstar from the company, not on the open market.

Chapter 7A

- Chapter 7A was originally adopted in 1984 as a means to protect Michigan shareholders from hostile takeovers via unsolicited tender offers or accumulation of shares in the open market.

- The statute applies to an "interested shareholder", which is defined as a shareholder that acquires 10% or more of the voting shares (with several exceptions). It requires any "business combination" (which is broadly defined) to be approved by both (i) the holders of 90% of all shares entitled to vote, and (ii) two-thirds of the shares entitled to vote which are not held by the "interested shareholder."

- As noted, the statute is so broadly written that its definition of "interested shareholder" has the unintended consequence of covering Michigan corporations where friendly shareholders take large positions by buying stock from the corporation (rather than in the open market). In that situation, rogue minority shareholders can block transactions that may benefit all shareholders, with only a merger with a company multiple times larger not requiring the Chapter 7A super-majority vote. Normal, desirable growth-focused transactions can be blocked in this manner.

- Flagstar provides a clear example of the unintended effects of this statute. Given MP Thrift's ownership in Flagstar and assuming a percentage of the shares entitled do not cast their vote, even a very small minority (possibly 5% to 10%) could block the vote for a "business combination" supported by the board and a large majority of the shareholders.

- Reputable sources have indicated that there will be significant industry consolidation over the next several years, and Michigan-based companies such as Flagstar should not be prevented from participating in that consolidation, either as an acquirer or acquire, solely based on the unintended consequences of Chapter 7A.

Proposed Amendment

- We propose a discrete amendment to Chapter 7A to avoid the requirement of a super-majority vote in circumstances where it would benefit the corporation.
- We propose that Chapter 7A be amended to exclude from the definition of "interested shareholder" (unless the board elects to include) those shareholders who purchase stock from the corporation.

Please Support and Vote Yes for SB 357